

1 BILL NO. S-90-06-16

2 SPECIAL ORDINANCE NO. S-144-90

3 AN ORDINANCE approving  
4 Contract #6149-90, LAKE AVENUE  
5 WIDENING between WAYNE ASPHALT  
6 & CONSTRUCTION CO., INC. and  
7 the City of Fort Wayne,  
8 Indiana, in connection with  
9 the Board of Public Works and  
10 Safety.

11 NOW, THEREFORE, BE IT ORDAINED BY THE COMMON  
12 COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

13 SECTION 1. That the Contract #6149-90, LAKE  
14 AVENUE WIDENING by and between WAYNE ASPHALT & CONSTRUCTION  
15 CO., INC. and the City of Fort Wayne, Indiana, in connection  
16 with the Board of Public Works and Safety, is hereby  
17 ratified, and affirmed and approved in all respects,  
18 respectfully for:

19 improving Lake Avenue by  
20 widening Twelve (12) feet on  
21 the North side from the West  
22 pavement line of Reed Road to  
23 a point 1650 feet West  
24 thereof;

25 involving a total cost of Eighty-Two Thousand Five Hundred  
26 Eighty-Nine and 10/100 Dollars (\$82,589.10).

27 SECTION 2. Prior Approval has been requested from  
28 Common Council on June 6, 1990. Two copies of said Contract  
29 are on file with the Office of the City Clerk and made  
30 available for public inspection, according to law.

31 SECTION 3. That this Ordinance shall be in full  
32 force and effect from and after its passage and any and all  
necessary approval by the Mayor.

33 Charles R. Edmond  
Councilmember

APPROVED AS TO FORM  
AND LEGALITY

J. Timothy McCaulay  
J. Timothy McCaulay, City Attorney



CONTRACT NO. 6149-90

LAKE AVENUE

BOARD ORDER NO. 148-89

WORK ORDER NO. 10,831

THIS CONTRACT made and entered into in triplicate this 25<sup>th</sup> day of April, 1970, by and between WAYNE ASPHALT & CONSTRUCTION CO., INC, herein called CONTRACTOR, and the City of Fort Wayne, Indiana, an Indiana Municipal Corporation, acting by and through the Mayor and the Board of Public Works and Safety, herein called OWNER;

WITNESSETH, that the CONTRACTOR and the OWNER, for the considerations hereinafter named, agree as follows:

#### ARTICLE 1: SCOPE OF WORK

CONTRACTOR shall furnish all labor, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for the following:

RES. NO. 6149-90 LAKE AVENUE

To improve Lake Avenue by widening Twelve (12) Feet on the north side from the west pavement line of Reed Road to a point 1650 feet west thereof.

all according to RES. NO. 6149-90, Drawing No. \_\_\_\_\_, Sheets \_\_\_\_\_, and do everything required by this contract and the other documents constituting a part hereof.

#### ARTICLE 2: THE CONTRACT SUM

The OWNER shall pay CONTRACTOR for the performance of the contract the unit price sum of \$ 82,589.10. In the event the amount of work is increased or decreased by OWNER, the contract sum shall be increased or decreased according to the unit price schedule set forth in the CONTRACTOR's Proposal.

#### ARTICLE 3: PROGRESS PAYMENTS

The OWNER shall make payments on account of the contract as provided herein, as follows:

Monthly progress payments will be made by OWNER upon submission of a statement of quantities of work completed and/or materials supplied to the job site as of the end of each month. On or about the 15th day of the following month, ninety (90%) percent of the value of the work performed up to the first day of that month (based on the contract price of labor and materials incorporated in the work) and as estimated by the CONTRACTOR and approved or revised by the Engineering Department



of the OWNER less the aggregate of previous payments, will be paid by OWNER to the CONTRACTOR.

#### ARTICLE 4: ACCEPTANCE AND FINAL PAYMENT

Final payment shall be due at the time the work is fully completed and accepted and the contract is fully performed.

Upon filing of a Completion Affidavit by the CONTRACTOR that the work is ready for final inspection and acceptance, the Board of Public Works and Safety will direct the Engineering Department of the OWNER to promptly make such inspection. When the Engineering Department finds the work acceptable under the contract, and the contract is fully performed, it shall so inform the Board of Public Works and Safety which shall issue a final certificate stating that the work provided for in this Contract has been completed and is accepted. Thereupon the entire balance of the Contract sum shall be due and payable to the CONTRACTOR; provided only that CONTRACTOR shall first furnish OWNER, if requested to do so, satisfactory evidence that all persons who have supplied labor, material, or equipment for the work have been fully paid, and all required manpower utilization reports for this project have been submitted.

#### ARTICLE 5: WORKMEN'S COMPENSATION ACT

The CONTRACTOR will furnish immediately a certificate from the Industrial Board of the State of Indiana, that he has complied with the Workmen's Compensation Act in accordance with Statutes of the State of Indiana and Ordinances of the City of Fort Wayne.

Any judgment rendered against the City of Fort Wayne in any suits for damages for injury to real or personal property, or for any injury sustained by any person growing out of any act or doing of Contractor, or its agents, employees or workmen or any judgment of any court or award of any Board of Arbitrators or of the Industrial Board of the State of Indiana rendered against the City of Fort Wayne in any suit or claim arising under said Workmen's Compensation for accidental injuries or death suffered by his employees or the employees of any Subcontractor or Subcontractors in the course of their employment, when notice of the pendency of such suit, hearing or arbitration shall have been given said CONTRACTOR, shall be conclusive against CONTRACTOR as to amount, liability and all other things pertaining thereto; it being the intent of the parties hereto that CONTRACTOR indemnify and hold harmless OWNER in the premises.

#### ARTICLE 6: NONDISCRIMINATION OF LABOR

The CONTRACTOR further agrees to be bound by Section 15-13 (as amended), of the Code of the City of Fort Wayne, Indiana of 1974, passed by the Common Council of the City of Fort Wayne, Indiana as General Ordinance No. G-34-78 (as amended) on December 12th, 1978. The successful bidder shall file a Manpower Utilization Report for this project with the Compliance Office within ten (10) days after comple-



CONTRACTOR shall furnish to OWNER, within ten (10) days of the date hereof, a certificate from an insurer acceptable to OWNER showing personal injury and property damage insurance, in force and issued in connection with the work to be performed under this Contract, in amounts satisfactory to OWNER and in accordance with the Statutes of the State of Indiana.



ARTICLE 11: ADJUSTMENTS OF DISPUTES

All questions or controversies which may arise between the CONTRACTOR and the OWNER under the provisions of this Contract shall be subject to the decision of the Director of Board of Public Works & Safety of the OWNER, and his decision shall be final and conclusive upon the parties.

Provided, however, no changes in the plans, specifications, or other phases of the work covered by this Contract will be permitted except on prior written authorization by the Board of Public Works and Safety.

ARTICLE 12: COMPLETION DATE

The CONTRACTOR agrees to complete the work specified in the contract within 6/30/90 consecutive calendar days after having been ordered by the OWNER to commence work under this contract.

ARTICLE 13: COUNCILMANIC APPROVAL

This Agreement, although executed on behalf of the OWNER by the Mayor and Board of Public Works and Safety of the City of Fort Wayne, Indiana, shall not be binding upon the OWNER unless and until the same shall have been ratified and approved by the Common Council of the City of Fort Wayne, Indiana, and should said Common Council fail to approve the same within ninety (90) days after the date hereof, then this Contract shall be and become wholly void.

ARTICLE 14:

This contract is governed by Laws of the State of Indiana.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

(CONTRACTOR)

BY: Irving E. Walter  
\_\_\_\_\_, President

BY: \_\_\_\_\_  
\_\_\_\_\_, Secretary

CITY OF FORT WAYNE, INDIANA

BY: P. Helmke  
Paul Helmke, Mayor

~~BOARD OF PUBLIC WORKS & SAFETY~~

Charles E. Layton  
Director of Public Works

Michael McAlexander  
Director of Public Safety

Douglas M. Lehman  
Director of Administration &  
Finance

ATTEST:

Helen V. Gochenour  
Helen V. Gochenour, Clerk



# UNITED STATES FIDELITY AND GUARANTY COMPANY



## PERFORMANCE BOND

Approved by The American Institute of Architects

A. I. A. Document No. A-311 (February 1970 Edition)

BOND NUMBER.....

### KNOW ALL MEN BY THESE PRESENTS:

That WAYNE ASPHALT & CONSTRUCTION COMPANY, INC......  
..... as Principal,  
hereinafter called Contractor, and UNITED STATES FIDELITY AND GUARANTY COMPANY, a corporation organized and existing under the laws  
of the State of Maryland, Baltimore, Maryland, as Surety, hereinafter called Surety, are held and firmly bound unto .....  
Board of Public Works & Safety, City of Fort Wayne.....  
as Oblige, hereinafter called Owner, in the amount of .....  
Eighty Two Thousand, Five Hundred Eighty Nine and 10/100--Dollars (\$82,589.10).....,  
for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and  
severally, firmly by these presents.

**WHEREAS**, Contractor has by written agreement dated March 21..... 1990, entered into a contract with Owner for

Resolution #6149-90; Widening of Lake Avenue

in accordance with drawings and specifications prepared by .....  
(Here insert full name, title and address)  
....., which contract is by reference made a part  
hereof, and is hereinafter referred to as the Contract.

**NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION** is such that, if Contractor shall promptly and faithfully perform  
said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Owner.

Whenever Contractor shall be, and declared by Owner to be in default under the Contract, the Owner having performed Owner's obligations  
thereunder, the Surety may promptly remedy the default, or shall promptly

- (1) Complete the Contract in accordance with its terms and conditions, or
- (2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the Owner elects, upon determination by the Owner and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and Owner, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and any amendments thereto, less the amount properly paid by Owner to Contractor.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the  
Contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or  
the heirs, executors, administrators or successors of the Owner.

Signed and sealed this 21st..... day of March....., 1990.

In the presence of:

Melissa A. Beyer  
(Witness)  
YASTE, ZENT & RYE AGENCY, INC.  
Carol J. Austin  
(Witness)

WAYNE ASPHALT & CONSTRUCTION COMPANY, INC.

By Carol J. Austin (Seal)  
Principal  
UNITED STATES FIDELITY AND GUARANTY COMPANY

By John J. [Signature] (Seal)  
Attorney-in-Fact



# UNITED STATES FIDELITY AND GUARANTY COMPANY

Baltimore, Maryland

(A Stock Company)

## LABOR AND MATERIAL PAYMENT BOND

Approved by The American Institute of Architects

A. I. A. Document No. A-311 (February 1970 Edition)

KNOW ALL MEN BY THESE PRESENTS:

BOND NUMBER

That WAYNE ASPHALT & CONSTRUCTION COMPANY, INC.

..... as Principal,  
hereinafter called Principal, and UNITED STATES FIDELITY AND GUARANTY COMPANY, a corporation organized and existing under the laws  
of the State of Maryland, Baltimore, Maryland as Surety, hereinafter called Surety, are held and firmly bound unto

Board of Public Works & Safety, City of Fort Wayne

as Oblige, hereinafter called Owner, for the use and benefit of claimants as hereinbelow defined, in the amount of  
Eighty Two Thousand, Five Hundred Eighty Nine and 10/100--- Dollars (\$82,589.10),  
for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and  
severally, firmly by these presents.

**WHEREAS**, Principal has by written agreement dated March 21, 1990, entered into a contract with Owner for  
Resolution #6149-90; Widening of Lake Avenue  
in accordance with drawings and specifications prepared by .....

(Here insert full name, title and address)

..... which contract is by reference made a part  
hereof, and is hereinafter referred to as the Contract.

**NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION** is such that if the Principal shall promptly make payment to all  
claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this  
obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

- (1) A claimant is defined as one having a direct contract with the Principal or with a sub-contractor of the Principal for labor, material,  
or both, used or reasonably required for use in the performance of the contract, labor and material being construed to include that  
part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.
- (2) The above-named Principal and Surety hereby jointly and severally agree with the Owner that every claimant as herein defined, who  
has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's  
work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such  
claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The  
Owner shall not be liable for the payment of any costs or expenses of any such suit.
- (3) No suit or action shall be commenced hereunder by any claimant,
  - (a) Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to any two of the  
following: The Principal, the Owner, or the Surety above named, within ninety (90) days after such claimant did or performed the  
last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy  
the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or  
performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope  
addressed to the Principal, Owner or Surety, at any place where an office is regularly maintained for the transaction of business,  
or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that  
such service need not be made by a public officer.
  - (b) After the expiration of one (1) year following the date on which Principal ceased work on said Contract, it being understood,  
however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation  
shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.
  - (c) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the  
project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part  
thereof, is situated, and not elsewhere.
- (4) The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive  
of the payment by Surety of mechanics' liens which may be filed of record against said improvement, whether or not claim for the  
amount of such lien be presented under and against this bond.

Signed and sealed this 21st day of March, 1990.

Melissa A. Bayler  
(Witness)

YASTE, ZENT & RYE AGENCY, INC.

Carol J. Austin  
(Witness)

WAYNE ASPHALT & CONSTRUCTION COMPANY, INC.

By Craig A. Meyer (Seal)  
Principal

By John J. Hest (Seal)  
UNITED STATES FIDELITY AND GUARANTY COMPANY  
Attorney-in-Fact

This bond is issued simultaneously with performance bond in favor of the Owner conditioned on the full and faithful performance of the Contract.



CERTIFIED COPY

GENERAL POWER OF ATTORNEY

No. 97796

Know all Men by these Presents:

That UNITED STATES FIDELITY AND GUARANTY COMPANY, a corporation organized and existing under the laws of the State of Maryland, and having its principal office at the City of Baltimore, in the State of Maryland, does hereby constitute and appoint Gerald A. Dahle, John J. Pikel, Donald T. Belbutowski and Diane T. Green

of the City of Fort Wayne, State of Indiana,  
its true and lawful attorneys in and for the State of Indiana

for the following purposes, to wit:

To sign its name as surety to, and to execute, seal and acknowledge any and all bonds, and to respectively do and perform any and all acts and things set forth in the resolution of the Board of Directors of the said UNITED STATES FIDELITY AND GUARANTY COMPANY, a certified copy of which is hereto annexed and made a part of this Power of Attorney; and the said UNITED STATES FIDELITY AND GUARANTY COMPANY, through us, its Board of Directors, hereby ratifies and confirms all and whatsoever ~~done~~ anyone of the said Gerald A. Dahle and the said John J. Pikel and the said Donald T. Belbutowski and the said Diane T. Green

may lawfully do in the premises by virtue of these presents.

In Witness Whereof, the said UNITED STATES FIDELITY AND GUARANTY COMPANY has caused this instrument to be sealed with its corporate seal, duly attested by the signatures of its Vice-President and Assistant Secretary, this 27th day of November, A. D. 1985

UNITED STATES FIDELITY AND GUARANTY COMPANY.

(Signed) By W. Bradley Wallace  
Vice-President.

(SEAL) (Signed) John A. Umberger  
Assistant Secretary.

STATE OF MARYLAND. }  
BALTIMORE CITY, } ss:

On this 27th day of November, A. D. 1985, before me personally came W. Bradley Wallace, Vice-President of the UNITED STATES FIDELITY AND GUARANTY COMPANY and John A. Umberger, Assistant Secretary of said Company, with both of whom I am personally acquainted, who being by me severally duly sworn, said that they, the said W. Bradley Wallace and John A. Umberger were respectively the Vice-President and the Assistant Secretary of the said UNITED STATES FIDELITY AND GUARANTY COMPANY, the corporation described in and which executed the foregoing Power of Attorney; that they each knew the seal of said corporation; that the seal affixed to said Power of Attorney was such corporate seal, that it was so fixed by order of the Board of Directors of said corporation, and that they signed their names thereto by like order as Vice-President and Assistant Secretary, respectively, of the Company.

My commission expires the first day in July, A. D. 1986.

(SEAL) (Signed) Margaret M. Hurst  
Notary Public.

STATE OF MARYLAND }  
BALTIMORE CITY, } Sgt.

I, Sandra E. Banks, Clerk of the Circuit Court for Baltimore City, which Court is a Court of Record, and has a seal, do hereby certify that Margaret M. Hurst, Esquire, before whom the annexed affidavits were made, and who has thereto subscribed his name, was at the time of so doing a Notary Public of the State of Maryland, in and for the City of Baltimore, duly commissioned and sworn and authorized by law to administer oaths and take acknowledgment, or proof of deeds to be recorded therein. I further certify that I am acquainted with the handwriting of the said Notary, and verily believe the signature to be his genuine signature.

In Testimony Whereof, I hereto set my hand and affix the seal of the Circuit Court for Baltimore City, the same being a Court of Record, this 27th day of November, A. D. 1985

(SEAL) (Signed) Sandra E. Banks  
Clerk of the Circuit Court for Baltimore City.



Read the first time in full and on motion by Edmonds, seconded by Salerno, and duly adopted, read the second time by title and referred to the Committee on Public Works (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Conference Room 128, City-County Building, Fort Wayne, Indiana, on \_\_\_\_\_, the \_\_\_\_\_, day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock, \_\_\_\_\_ M., E.S.T.

DATED: 6-12-90  
Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Edmonds, seconded by Salerno, and duly adopted, placed on its passage. PASSED ~~lost~~ by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	<u>7</u>			<u>2</u>
BRADBURY				<u>✓</u>
BURNS	<u>✓</u>			
EDMONDS	<u>✓</u>			
GIAQUINTA				<u>✓</u>
HENRY	<u>✓</u>			
LONG	<u>✓</u>			
REDD	<u>✓</u>			
SCHMIDT	<u>✓</u>			
TALARICO	<u>✓</u>			

DATED: 6-26-90  
Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL) (SPECIAL) (ZONING MAP) ORDINANCE RESOLUTION NO. S-144-90 on the 26th day of June, 1990.

Sandra E. Kennedy ATTEST  
SANDRA E. KENNEDY, CITY CLERK  
Charles S. Reed SEAL  
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 27th day of June, 1990 at the hour of 1:30 o'clock P. M., E.S.T.

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 27th day of June, 1990, at the hour of 4:00 o'clock P. M., E.S.T.

PAUL HELMKE  
PAUL HELMKE, MAYOR



Admn. Appr.

TITLE OF ORDINANCE: Res. #6149-90, Lake Avenue Widening

DEPARTMENT REQUESTING ORDINANCE: Board of Public Works & Safety

SYNOPSIS OF ORDINANCE: The Contract for Res. #6149-90, Lake Avenue Widening, is to improve Lake Avenue by widening Twelve (12) feet on the North side from the West pavement line of Reed Road to a point 1650 feet West thereof. Wayne Asphalt & Construction Co., Inc., is the contractor.

PRIOR APPROVAL RECEIVED ON 6/6/90.

*S-90-06-16*

EFFECT OF PASSAGE: Widening of Lake Avenue

EFFECT OF NON PASSAGE:

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) \$82,589.10

ASSIGNED TO COMMITTEE:



BILL NO. S-90-06-16

REPORT OF THE COMMITTEE ON PUBLIC WORKS

MARK E. GiaQUINTA, CHAIRMAN  
CLETUS R. EDMONDS, VICE CHAIRMAN  
HENRY, SCHMIDT, TALARICO

WE, YOUR COMMITTEE ON PUBLIC WORKS TO WHOM WAS

REFERRED AN (ORDINANCE) (~~RESOLUTION~~) approving Contract  
#6149-90, LAKE AVENUE WIDENING between WAYNE ASPHALT &  
CONSTRUCTION CO., INC. and the City of Fort Wayne, Indiana,  
in connection with the Board of Public Works and Safety

HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION  
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID  
(ORDINANCE) (~~RESOLUTION~~)X

DO PASS

DO NOT PASS

ABSTAIN

NO REC

C R Edmond

Samuel Talarico

OS Edmond

Samuel Talarico

OS Edmond

Samuel Talarico

OS Edmond

Samuel Talarico

OS Edmond

Samuel Talarico

OS Edmond

Samuel Talarico

OS Edmond

Samuel Talarico

OS Edmond

Samuel Talarico

DATED: 6-26-90

Sandra E. Kennedy  
City Clerk